Letters Patent Appeal No.635 OF 2002

M/S MAHENDRA PRASAD & ORS----------(Appellant)

Versus

THE STATE OF BIHAR & ORS----------(Respondents)

With

Letters Patent Appeal No.691 OF 2002

M/S AYODHYA PRASAD & ORS----------(Appellant)

Versus

THE STATE OF BIHAR & ORS----------(Respondents)

(Against the Judgment and Order dated 3rd May, 2002 and 7th May, 2002 passed by Hon'ble Mr. Justice S.K. Katriar, in C.W.J.C. No.2109 of 2002 and 4205 of 2002 respectively.)

For the Appellants: Mr. Vijay Kumar Bhagat, Sr. Advocate,
Mr. Vinay Krishna Shukla, Advocate,
Mr. Gopal Tiwari, Advocate,
Mr. Ravi Shankar, Advocate,
Mr. Amlesh Kr. Verma, Advocate.

For the Respondents: Mr. Shashi Bhushan Kumar, S.C.16.

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P R E S E N T

THE HON'BLE MR. JUSTICE BARIN GHOSH
THE HON'BLE MR. JUSTICE C.M.PRASAD

Barin Ghosh & C.M. Prasad, JJ.

Whereas license fee is a charge for providing services, rent is consideration agreed for occupying an immovable property. In the instant case we are not concerned with license fee. We are concerned with rent.

The object of enacting Bihar Agricultural Produce

Markets Act, 1960, which has since been repealed, was to control and regulate marketing of agricultural produce. The Act established Market Committees, as body corporates, with authority to levy license fee and corresponding obligation of improving infrastructure of markets dealing with the agricultural produce. In course of developing such infrastructure, the respondent Market Committee constructed shops, godowns, etc. and had let out the same to many including the appellants.

At the time when the appellants were initially inducted, they were authorized to remain in possession for a period of 11 months subject to a right to remain in possession for successive further terms of 11 months, but upon enhancement of rent not exceeding 50% of the rent. The said conditions emanate from agreements, where the appellants were described as leasees.

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The appellants remained in occupation of the shops, godowns, etc. after expiry of the initial 11 months and even after expiry of successive terms of 11 months. The rent payable by them, however, was not increased while the appellants were permitted to remain in occupation of their shops and godowns during the successive terms of 11 months. The respondent market committee, after passage of considerable period of time demanded rent at enhanced rate from the

appellants. While the demand was about five times the agreed rent, the appellants were fastened with the liability with retrospective effect. This action on the part of the respondent Market Committee resulted in filing of two writ petitions which having been dismissed by the Judgment and Orders under appeal, the appellants are before us.

Before the writ Court it was contended by the appellants that in view of Section 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, the respondent Market Committee could not increase rent suomotu. The respondent Market-Committee contended before the writ Court that since it is a local authority, the Rent Control Act has no application to it. For the reasons indicated in the Judgment and Order under appeal and also the facts recorded therein and applying the same to the principles enunciated by the Hon'ble Supreme Court in the case of Union of India & Ors. V. Shri R.C. Jain and Ors, reported in 1981 (2) SCC 308, we are of the view that the respondent-Market Committee was outside the purview of the Rent Control Act. Accordingly, the said Act did not create a fetter in enhancing rent.

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The Judgment and Order under appeal proceeded on the basis, though there was no pleading to that effect in the counter affidavit, that the occupation of the appellants was on ad hoc basis, and

accordingly, it was held that the Committee was authorized to bring to an end the ad hocism by finally fixing the rent payable. While holding thus the written agreement between the parties had not been looked at. We, having considered the agreements between the parties, are of the view that the writ Court was not correct in pronouncing that the occupation of the appellants was an ad hoc arrangement.

From what we have stated above, it would be evident that the respondent-Market Committee was free to enter into agreements for parting with possession of immovable properties belonging to it and to charge or claim rent in relation thereto. A Division Bench of this Court in L.P.A. No.590 of 2001 heard with L.P.A. No.797 of 2001, 779 of 2001 and 6 of 2002 has held in no uncertain terms that Market Committees while are entitled to charge rent, they are also entitled to enhance the same, but since Market Committees are statutory Corporates, their action of increasing rent must be fair and reasonable. In that case, fairness and reasonableness on the part of the Market Committees in enhancing rent was gone in and the Court pronounced that the same was free of any arbitrariness as well as unreasonableness. In the instant case, however, fairness of increase of rent is not in question. In other words, the appellants are contending that even if enhancement of rent is justified and fair, still then the same is not

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recoverable from the appellants, until the appellants agree.

While the Act authorizes the Market Committees to levy fee and imposes obligation to render service by, inter alia, making available better infrastructure, but does not direct the Committees to deal with such infrastructure in any particular manner and thereby does not control corresponding rights and liabilities in between the Market Committees and the users of such infrastructure. In such circumstances, use of such infrastructure by the people is governed by the general law applicable to the filed.

General Law governing the filed is contained in the Transfer of Property Act, 1882. Section- 105 of the Act recognizes the right to enjoy an immovable property by the lessee thereof on payment of such consideration as agreed between the lessor and the leasee. The leasee must therefore agree, the same can not be imposed by the lessor unilaterally. Section- 111 of the Act brings to an end the right of the lessee to remain in occupation of the property leased, when the time to enjoy the property by the lessee comes to an end. However, as provided in Section- 116 of the Act, if the lessee remains in occupation of the lease-hold after the lease has come to an end and the lessor accepts rent from the lessee or otherwise consents to his continued possession, the lease, in the absence of the agreement to the contrary, is

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renewed. Whether the leases in the instant cases were renewed or not in view of Section 116 of the Act is a question of fact, which cannot be gone in writ jurisdiction. At the same time when right to remain has been recognized on payment of agreed consideration, having regard to the law applicable to this country for last 150 years that no one can be dispossessed without due process of law, because the appellants have not agreed to the enhancement proposed, they cannot be forced out from possession of their respective lease-hold without due process of law. That being the situation, while setting aside the judgment and order under appeal, we dispose of the writ petition with a mere declaration to that effect. The appeal is thus disposed of.

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Patna High Court,
The 15th September,
2008, N.A.F.R./Mkr.

(Barin Ghosh, J.)

(C.M. Prasad, J.)